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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TAL PROPERTIES OF POMONA, LLC, and AVROHOM
MANES

Plaintiffs,

Docket No. 7:19-cv-06838

-against-

**DECLARATION IN
OPPOSITION TO
PLAINTIFFS' MOTION TO
RECONSIDER**

VILLAGE OF POMONA, BRETT YAGEL, individually
and in his official capacity as Mayor of the Village Of
Pomona, DORIS ULMAN, individually and in her official
capacity as Attorney for the village of Pomona, LOUIS
ZUMMO, individually and in his official capacity as
Building Inspector for the Village Of Pomona, NOREEN
SHEA, individually and in her official capacity as Deputy
Village Clerk for the Village Of Pomona, FRANCIS ARSA-
ARTHA individually and in her official capacity as Clerk
Treasurer for the Village Of Pomona, CHRISTOPHER
RILEY, individually and in his official capacity as Special
Prosecutor for the Village Of Pomona; JOSEPH CORLESS,
individually and in his official capacity as Engineer for the
Village Of Pomona LEON HARRIS, individually and in his
official capacity as Deputy Mayor for the Village Of
Pomona, IAN BANKS, individually and in his official
capacities as Trustee, and Current Mayor for the Village of
Pomona, and JOHN DOES and JANE DOES,

Defendants.

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JANINE A. MASTELLONE, an attorney duly admitted to practice law before the Courts
of the State of New York, and the United States District Court for the Southern District of New
York, hereby declares pursuant to the penalty of perjury and 28 U.S.C. §1746 as follows.

1. I am a partner in the law firm Wilson, Elser, Moskowitz, Edelman & Dicker LLP, attorneys for Louis Zummo, Building Inspector for the Village of Pomona, in the above-captioned action.

2. I submit this declaration in support of the Mr. Zummo's opposition to the Plaintiffs' motion to reconsider the Court's September 7, 2021 Memorandum Opinion and Order granting the Individual Defendants' Motion to Dismiss the Second Amended Complaint.

3. At the time the defendants' motions to dismiss the Plaintiff's Second Amended Complaint were filed, this firm represented Mr. Zummo, as well as Defendants Brett Yagel, Doris Ulman, Fran Arsa-Artha, and Leon Harris (collectively, the "Individual Defendants"). Wilson Elser submitted a motion to dismiss on behalf of the Individual Defendants. Subsequently, in March 2021, while the motions to dismiss were pending, Defendants Yagel, Ulman, Arsa-Artha, and Harris changed counsel. *See* DE #160.

4. Attached hereto as **Exhibit A** is a copy of this Court's September 7, 2021 Memorandum Opinion and Order dismissing the Second Amended Complaint (the "September 7th Order").

5. Annexed hereto as **Exhibit B** is a copy of the Individual Defendants' Motion to Dismiss the Second Amended Complaint and Declaration in Support with Exhibits, filed on December 23, 2020. (DE# 130, 130-1 through 130-10). The documents contained within Exhibit B include:

- a. Notice of Individual Defendants' Motion to Dismiss the Second Amended Complaint
- b. Declaration of Janine A. Mastellone
- c. Exhibit A to the Declaration – TAL 2 Second Amended Complaint

- d. Exhibit B to the Declaration – TAL 1 Second Amended Complaint
- e. Exhibit C to the Declaration – Notice of Motion to Dismiss TAL 1 SAC
- f. Exhibit D to the Declaration – Defendants’ Memorandum of Law in support of Motion to Dismiss TAL 1 SAC
- g. Exhibit E to the Declaration - January 10, 2018 Decision and Order in TAL 1
- h. Exhibit F to the Declaration – January 12, 2018 Judgment dismissing TAL 1
- i. Exhibit G to the Declaration – Plaintiffs’ Proposed Third Amended Complaint in TAL 1
- j. Exhibit H to the Declaration – July 22, 2019 Order denying Plaintiffs’ motion to reopen TAL 1
- k. Exhibit I to the Declaration – Docket in TAL 1 Appeal (19-cv-2247)

6. Attached hereto as **Exhibit C** is a copy of the Individual Defendants’ Memorandum of Law in support of the Motion to Dismiss the Second Amended Complaint in TAL 2. (DE #130-11).

7. The Village Defendants also filed a motion to dismiss the Plaintiffs’ Second Amended Complaint on December 23, 2020. *See* DE #131-134.

8. Attached hereto as **Exhibit D** is a copy of Plaintiff’s Memorandum of Law in Opposition to the Motions to Dismiss, which was filed on December 23, 2021. *See* DE #136.

9. Attached hereto as **Exhibit E** is a copy of the Individual Defendants’ Reply Memorandum in further support of their Motion to Dismiss the Second Amended Complaint. *See also* DE #135.

10. On February 1, 2021, defendant Noreen Shea also filed a motion to dismiss Plaintiffs' Second Amended Complaint. *See* DE #142-143, 165. Plaintiffs opposed the motion. *See* DE #154-155.

11. Attached hereto as **Exhibit F** is a copy of Plaintiffs' original complaint in TAL 1. Dkt. No. 17-cv-2928 (CS) DE #1-3.

WHEREFORE, for the reasons set forth in the accompanying memorandum of law in opposition, the Plaintiffs' motion to reconsider should be denied.

I declare that the foregoing is true and correct. Executed this 19th day of November, 2021.

A handwritten signature in dark ink, appearing to read 'Janine A. Mastellone', is written over a horizontal line.

Janine A. Mastellone